

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

April 2, 2003

3:18 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Nancy Dahlstrom
Representative Carl Gatto
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

Representative Bob Lynn, Vice Chair

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 43(FIN)

"An Act extending the termination date of the State Medical Board."

- MOVED CSSB 43(FIN) OUT OF COMMITTEE

HOUSE BILL NO. 203

"An Act relating to the definitions of 'net income' and 'unrestricted net income' for purposes of calculating the dividends to be paid to the state by the Alaska Industrial Development and Export Authority; and providing for an effective date."

- MOVED HB 203 OUT OF COMMITTEE

HOUSE BILL NO. 13

"An Act declaring legislative intent to reject the continuity of enterprise exception to the doctrine of successor liability adopted in *Savage Arms, Inc. v. Western Auto Supply*, 18 P.3d 49 (Alaska 2001), as it relates to products liability; providing that a successor corporation or other business entity that acquires assets of a predecessor corporation or other business entity is subject to liability for harm to persons or property caused by a defective product sold or otherwise distributed commercially by the predecessor only if the acquisition is accompanied by an agreement for the successor to assume the liability, results from a fraudulent conveyance to escape

liability for the debts or liabilities of the predecessor, constitutes a consolidation or merger with the predecessor, or results in the successor's becoming a continuation of the predecessor; defining 'business entity' that acquires assets to include a sole proprietorship; and applying this Act to the sale, lease, exchange, or other disposition of assets by a corporation, a limited liability company, a partnership, a limited liability partnership, a limited partnership, a sole proprietorship, or other business entity that occurs on or after the effective date of this Act."

- MOVED HB 13 OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 184

"An Act relating to individual deferred annuities; and providing for an effective date."

- MOVED CSSSHB 184(L&C) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: SB 43

SHORT TITLE: EXTEND STATE MEDICAL BOARD

SPONSOR(S): SENATOR(S) OLSON

Jrn-Date	Jrn-Page		Action
01/29/03	0074	(S)	READ THE FIRST TIME - REFERRALS
01/29/03	0074	(S)	L&C, FIN
02/27/03		(S)	L&C AT 1:30 PM BELTZ 211
02/27/03		(S)	Moved Out of Committee
02/27/03		(S)	MINUTE(L&C)
02/28/03	0293	(S)	L&C RPT 5DP
02/28/03	0293	(S)	DP: BUNDE, SEEKINS, DAVIS, FRENCH,
02/28/03	0293	(S)	STEVENS G
02/28/03	0294	(S)	FN1: (CED)
03/06/03		(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/06/03		(S)	Moved CSSB 43(FIN) Out of Committee
03/06/03		(S)	MINUTE(FIN)
03/07/03	0430	(S)	FIN RPT CS 6DP SAME TITLE
03/07/03	0430	(S)	DP: GREEN, WILKEN, TAYLOR, OLSON,
03/07/03	0430	(S)	STEVENS B, BUNDE
03/07/03	0430	(S)	FN1: (CED)

03/20/03	0571	(S)	RULES TO CALENDAR 3/24/2003
03/24/03	0571	(S)	READ THE SECOND TIME
03/24/03	0571	(S)	FIN CS ADOPTED UNAN CONSENT
03/24/03	0571	(S)	ADVANCED TO THIRD READING
			UNAN CONSENT
03/24/03	0571	(S)	READ THE THIRD TIME CSSB
			43(FIN)
03/24/03	0571	(S)	PASSED Y19 N- E1
03/24/03	0575	(S)	TRANSMITTED TO (H)
03/24/03	0575	(S)	VERSION: CSSB 43(FIN)
03/26/03	0630	(H)	READ THE FIRST TIME -
			REFERRALS
03/26/03	0630	(H)	L&C
03/26/03	0630	(H)	REFERRED TO LABOR & COMMERCE
04/02/03		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 203

SHORT TITLE:AIDEA DIVIDENDS TO STATE

SPONSOR(S): FINANCE

Jrn-Date	Jrn-Page		Action
03/19/03	0586	(H)	READ THE FIRST TIME -
			REFERRALS
03/19/03	0586	(H)	L&C, FIN
03/19/03	0586	(H)	REFERRED TO LABOR & COMMERCE
04/02/03		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 13

SHORT TITLE:SUCCESSOR LIABILITY FOR PRODUCT LIABILITY

SPONSOR(S): REPRESENTATIVE(S)ROKEBERG

Jrn-Date	Jrn-Page		Action
01/21/03	0034	(H)	PREFILE RELEASED (1/10/03)
01/21/03	0034	(H)	READ THE FIRST TIME -
			REFERRALS
01/21/03	0034	(H)	L&C, JUD
01/21/03	0034	(H)	REFERRED TO LABOR & COMMERCE
03/28/03		(H)	L&C AT 3:15 PM CAPITOL 17
03/28/03		(H)	Scheduled But Not Heard
04/02/03		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 184

SHORT TITLE:INDIVIDUAL DEFERRED ANNUITIES

SPONSOR(S): REPRESENTATIVE(S)COGHILL

Jrn-Date	Jrn-Page		Action
03/10/03	0492	(H)	READ THE FIRST TIME -

			REFERRALS
03/10/03	0492	(H)	L&C
03/28/03	0671	(H)	SPONSOR SUBSTITUTE INTRODUCED
03/28/03	0671	(H)	READ THE FIRST TIME -
			REFERRALS
03/28/03	0671	(H)	L&C
03/28/03	0671	(H)	REFERRED TO LABOR & COMMERCE
04/02/03		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

SENATOR DONNY OLSON

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as the sponsor of SB 43.

REPRESENTATIVE MIKE HAWKER

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 203 on behalf of the sponsor, the House Finance Committee, of which he is a member.

MIKE BARRY, Chairman of the Board

Alaska Industrial Development and Export Authority (AIDEA)

Department of Community & Economic Development

Anchorage, Alaska

POSITION STATEMENT: Spoke in opposition to HB 203, noting the anxiety created in the bond market when AIDEA's statutes are changed.

SARA FISHER-GOAD

Alaska Industrial Development and Export Authority

Department of Community & Economic Development

Anchorage, Alaska

POSITION STATEMENT: During the hearing on HB 203, answered questions on AIDEA's bond rating.

HEATHER NOBREGA, Staff

to Representative Norman Rokeberg

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified on HB 13, explaining the four exceptions to product liability's being transferred to the new owner when a company is sold.

REPRESENTATIVE JOHN COGHILL

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: As sponsor of SSHB 184, explained the need for the bill and the two proposed amendments that reflect a solution by national insurance commissioners.

JOHN GEORGE, Lobbyist

for the American Council of Life Insurers

Juneau, Alaska

POSITION STATEMENT: Testified on SSHB 184, explaining how life insurance companies cannot pay the minimum 3 percent interest on an annuity when it is cashed in, and how a national model recently became available.

KATIE CAMPBELL, Life and Health Actuary

Division of Insurance

Department of Community and Economic Development

Juneau, Alaska

POSITION STATEMENT: Answered questions about SSHB 184.

ACTION NARRATIVE

TAPE 03-27, SIDE A

Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 3:18 p.m. Representatives Anderson, Dahlstrom, Crawford, and Guttenberg were present at the call to order. Representatives Gatto and Rokeberg arrived as the meeting was in progress.

SB 43-EXTEND STATE MEDICAL BOARD

[Contains discussion of HB 73]

CHAIR ANDERSON announced that the first order of business would be CS FOR SENATE BILL NO. 43(FIN), "An Act extending the termination date of the State Medical Board." He noted that the committee had considered and passed out earlier this session the identical HB 73, extending the State Medical Board.

Number 0085

SENATOR DONNY OLSON, Alaska State Legislature, sponsor of SB 42, explained that the State Medical Board sunsets in 2003, which triggers the legislative review of its operations and activities. He'd introduced SB 43 to extend the board because of its satisfactory performance in the recent past, its positive

legislative audit, and his own experience [as a former member of the State Medical Board]. He said he expects the board will increase its licensing activities in the near future to serve the medical community's expansion and the retirement of its senior professionals.

SENATOR OLSON noted several changes in the medical board over the last several years, including the addition of a board member who is a physician assistant (PA). He urged the committee to pass CSSB 43(FIN) out of committee.

Number 0189

SENATOR OLSON, in reply to a question from Chair Anderson, said the only change to SB 43 [as amended by the Senate Finance Committee] was to reduce the board's extension from eight years to four years.

CHAIR ANDERSON recalled the committee's discussion on HB 73 on whether to extend the board beyond the typical four-year term. He stated that legislators can request a legislative audit at any time, and that an approaching sunset gives the legislature the opportunity to observe and monitor the board's work.

Number 0274

REPRESENTATIVE GUTTENBERG asked if the committee wants to match the [eight-year] termination date of HB 73.

SENATOR OLSON explained why he prefers the four-year extension. With the addition of a physician assistant, the board now has eight members. He said he feels that the new position represents the PA licensees. The PAs have attended every board meeting as members of the audience, closely watching the board's work. With that kind of change in membership, he said, he wanted to see how well the board is doing after four years.

REPRESENTATIVE GUTTENBERG asked whether having an even number of members would be a problem [in the case of tie votes].

SENATOR OLSON replied that both houses of the legislature have an even number of members. Tie votes occur but are rare. The eighth seat on the State Medical Board gives another perspective. He said in rural Alaska many physicians especially appreciate the mid-level professionals, who are such an important part of fighting disease.

Number 0502

REPRESENTATIVE DAHLSTROM moved to report CSSB 43(FIN) out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSSB 43 (FIN) was reported from the House Labor and Commerce Standing Committee

HB 203-AIDEA DIVIDENDS TO STATE

Number 0560

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 203, "An Act relating to the definitions of 'net income' and 'unrestricted net income' for purposes of calculating the dividends to be paid to the state by the Alaska Industrial Development and Export Authority; and providing for an effective date."

Number 0605

REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, presented HB 203 on behalf of the House Finance Committee, sponsor, of which he is a member. He explained that the bill would give the finance committee a tool to use in this year's budgeting process. The Alaska Industrial Development and Export Authority (AIDEA) has a statutory requirement to pay a dividend to the state each year.

REPRESENTATIVE HAWKER explained that last year, AIDEA's statute was revised to reflect changes by the accounting profession in preparation of financial statements and reports. However, he said, one issue was not addressed - the accounting for asset impairments. Per its policy, AIDEA must pay the State of Alaska a dividend that is between 25 and 50 percent of its net income. That dividend may not exceed AIDEA's unrestricted net income. He explained that the legislature clarified the definitions of "net income" and "unrestricted net income," setting the parameters for the dividend. At that time, the legislature defined income to exclude those items that were not part of the authority's actual operating income, such as intergovernmental transfers, capital contributions, and grant income. For example, AIDEA's dividend to the state is an intergovernmental transfer; [a past dividend] should not be [calculated into] the net income for determining the [future] dividend.

REPRESENTATIVE HAWKER said the goal of last year's statutory change was to make the accountant's presentation of net income

for the purposes of calculating the dividend the same as the authority's operating income. He said the legislature did not want to distribute more of the operating income than would be appropriate or that would invade the restricted portions of the funds, either capital or income.

Number 0831

REPRESENTATIVE HAWKER explained that HB 203 further clarifies the definition of income. When determining net income, HB 203 would exclude expenses already reported on financial statements that resulted from impairment losses on AIDEA's development projects. He explained that an impairment loss is a loss in value of an asset that was purchased in prior years. Unlike a current expense that takes cash out of the authority, an impairment loss is a noncash entry in the books. Professional accounting policy requires that impairment losses be recognized. He said that because the recognition of impairment losses have no effect on AIDEA's cash balance or on its true operating income for a given year, the House Finance Committee wants impairment losses excluded from the AIDEA's income for purposes of determining the dividend.

Number 0922

REPRESENTATIVE HAWKER testified that the House Finance Committee is sponsoring HB 203 because under the current statute, AIDEA will not have any statutory or defined income available for a dividend for FY 04. In the past, this dividend has been about \$20 million a year - a substantial amount, given the current financial situation. During the base year on which the state's FY 04 dividend is calculated, AIDEA recognized significant impairment losses on the Healy Clean Coal Project and on Alaska Seafood International. The accountants and managers of AIDEA analyzed these projects and decided they're not worth what AIDEA paid for them, and the managers recognized that loss in the financial statements. Again, he emphasized, this process did not take cash or liquid assets.

Number 1030

REPRESENTATIVE HAWKER explained that excluding impairment loss from the calculation of income would make a \$9 to \$18 million dividend available for use in the FY 04 budget. According to the agency's annual report dated June 30, 2002, which is the base year for calculating the FY 04 dividend, AIDEA has roughly \$789 million in unrestricted net assets. It has \$356 million of

unrestricted cash and investments on hand, from which a dividend to the state could be paid, he said. Had the legislature not adopted the accounting changes last year, AIDEA would have had income to pay a dividend in FY 04, he said. He asked members to pass HB 203 on to the House Finance Committee, which can determine whether to use this tool as part of the FY 04 budget process.

Number 1110

REPRESENTATIVE HAWKER noted that the committee will hear from AIDEA that its board voted 100 percent against this bill. He recalled that when the dividend legislation itself was passed, the board was concerned about whether the dividend would rob AIDEA of its ability to carry out its mission. He said the state has a modest dividend formula in place, and it works. He said it's good policy for AIDEA to be able to write down bad investments made years ago, but it should not sacrifice the statutory dividend to the state. He said AIDEA has the operating income and cash available to pay the dividend.

Number 1191

REPRESENTATIVE GATTO asked what happened to the money that was written off for bad investments. Does it exist anymore?

REPRESENTATIVE HAWKER said he can't pass judgment on how AIDEA manages its investments. He said this bill creates a fair dividend policy.

REPRESENTATIVE GATTO clarified that he wasn't asking for a judgment on the investment; he was asking what happens when an investment is written down.

Number 1270

REPRESENTATIVE HAWKER replied that when managers determine that the fair value of an asset is no longer represented by the amount invested, then the amount of the asset is lowered. But to keep the books balance, the transaction is shown as a loss or a reduction in AIDEA's net assets.

REPRESENTATIVE GATTO asked whether the purpose of HB 203 is to make that definition.

Number 1322

REPRESENTATIVE HAWKER explained that HB 203 states that those impairment losses, those write-downs of money spent long ago, are not included in the determination of net income for purposes of the dividend. He referred to a spreadsheet in the bill packet entitled "House Bill 203, AIDEA Dividends to State, Calculations for Committee Presentation." The net loss for AIDEA for the year ended June 30, 2003, was \$72,506,000, he explained. Included in the \$72-million loss is \$91,346,000 associated with valuation adjustments for the Healy Clean Coal Project and the Alaska Seafood International. He said existing statute looks at the decrease in net assets and bases the dividend on that. The result is a negative number; there's nothing to distribute.

REPRESENTATIVE HAWKER noted that HB 203 looks at those write-offs of impaired assets that didn't take any cash out of AIDEA. Adding that number back results in \$18 million. Under the current statute, the previous year's dividend of \$17,500,000 is added back in for a net income under HB 203 of \$36,340,000. He said this figure of \$36 million represents how AIDEA truly operated last year. Based on the \$36 million figure, a 25 percent dividend would equal \$9 million, and a 50 percent dividend would equal \$18 million.

Number 1467

REPRESENTATIVE GUTTENBERG asked whether AIDEA is still bound by bonding authority, federal requirements, and other agencies outside state government.

REPRESENTATIVE HAWKER reiterated that AIDEA must adhere to sound accounting principles, including the reporting of accounting losses. But, he said, these losses are not relevant to the current capacity of AIDEA to pay a dividend to the state.

Number 1596

REPRESENTATIVE HAWKER stated that he discussed these issues with a bond counsel, who said that consistency is the overriding issue in maintaining AIDEA's bond rating. He said he was told that a stable business environment and consistent regulations are critical. Representative Hawker agreed that this is a change in law, but it is a clean up from last year's legislation. He said the rating agencies in New York have probably asked many questions about the Alaska Seafood International and the ongoing value of these assets. That factor (the discrepancy between value on the books and actual

worth) was inherent in the analysis performed by the bonding and rating agencies prior to AIDEA writing it down. Bond rating agencies are particularly thorough when they analyze companies, he said.

REPRESENTATIVE HAWKER said he did not believe HB 203 would alarm AIDEA's bond rating agencies. He said he anticipates a detailed presentation by the bonding agencies to the finance committee. AIDEA wrote off \$91 million, and it won't pay a dividend as a result of that write-down. He reported that he was told AIDEA may write off additional money on Alaska Seafood International next year, and may not pay a dividend in the following year.

Number 1722

REPRESENTATIVE CRAWFORD noted that AIDEA had funded Mark Air, which went bankrupt. He asked if AIDEA treated both companies' assets the same.

REPRESENTATIVE HAWKER said he wasn't able to answer that.

Number 1750

REPRESENTATIVE ROKEBERG asked about the residual value of the Alaska Seafood International.

REPRESENTATIVE HAWKER suggested the question be addressed to AIDEA staff at the meeting.

REPRESENTATIVE ROKEBERG noted that the AIDEA [Balance Sheet for June 30, 2002] shows the current assets of \$121 million and current liabilities of \$14 million for a ratio of 9 to 1. He asked if this is a healthy ratio.

Number 1813

REPRESENTATIVE HAWKER clarified that he is appearing before this committee not as an accounting official, but as a legislator. He said he is pleased with the overall financial health and condition of AIDEA. He said it's a strong, vibrant, vital part of investing in business in Alaska.

Number 1835

REPRESENTATIVE ROKEBERG asked about AIDEA's unrestricted net assets of \$789 million on the HB 203 spreadsheet.

REPRESENTATIVE HAWKER described that figure as the true unrestricted net assets. He said AIDEA has some assets restricted for debt service; the aggregate net assets are \$792 million.

REPRESENTATIVE ROKEBERG asked if the cash available was \$356,589,000.

REPRESENTATIVE HAWKER referred to the spreadsheet and noted that the \$356,589,000 figure consists of cash and cash equivalents, investment securities - current, and investment securities - non-current. He confirmed Representative Rokeberg's estimate that \$96 million of the \$356 million are truly liquid assets.

Number 1901

REPRESENTATIVE ROKEBERG said the intent of the law allows the legislature to receive income from AIDEA. He said it's apparent from AIDEA's financial statements that it can afford to pay a dividend now. But, he asked, what if there are further write-downs on some of these assets; will AIDEA be unable to pay this dividend in the future? He asked if the problem is self-righting because the statutory formula for dividends is still dependent on the net income, and HB 203 only changes the description of net income.

REPRESENTATIVE HAWKER said it is clearly the latter. He theorized that if AIDEA wrote off the entire balance of those two assets, it would not affect last year's net income. AIDEA still has the ongoing cash flow from other productive assets; the more successful investments within AIDEA continue to produce income.

Number 1954

REPRESENTATIVE ROKEBERG said HB 203 makes an adjustment in the balance sheet, but it doesn't affect AIDEA's ability to make the dividend payment or to be a viable entity. He summarized Representative Hawker's position that HB 203 does not jeopardize the ability of the corporation to operate or its financial underpinnings.

REPRESENTATIVE HAWKER agreed to both points.

Number 2004

MIKE BARRY, Chairman of the Board, Alaska Industrial Development and Export Authority, Department of Community & Economic Development, said he disagreed with some of Representative Hawker's characterizations about the board. He explained that none of the current members were on the board in 1996 when the legislature passed the dividend legislation. He said he has been told that the board went on record as supporting the dividend at that time.

MR. BARRY told members that his board favors the dividend policy. He said AIDEA needs to represent to its financial constituents - the bonding, business, and banking communities - that it will be viable on the long-term basis. As he wrote in his [April 1, 2003] letter [to the co-chairs of the House Finance Committee], a lot of thought and dialogue went into the dividend legislation. Until this year, it has worked very well, he said.

Number 2060

MR. BARRY said he disagreed with Representative Hawker's interpretation of the accounting changes that were made last year. These accounting changes took AIDEA from one type of government accounting to another type, but both of these required a write-down of an asset when that loss is recognized by the authority. He said there were no changes made last year that would have affected the change proposed in HB 203. The difference between AIDEA and a tax-paying, for-profit corporation is that AIDEA is owned by the State of Alaska. AIDEA officials occasionally raise funds in the bonding community, not as a full faith and credit bonding agency of the state, but as an agency that makes promises which must be carried out based on AIDEA's assets, not based on other state funds, other state assets, or the power of taxation.

Number 2119

MR. BARRY described the anxiety of a bond purchaser interested in a 25-year investment who looks at the state's fiscal policy and says, "They're running out of oil revenues. They have a serious need for funds. Perhaps the legislature is going to raid AIDEA for funds." He said that's why the dividend legislation of 1996 is a proper and logical answer to that anxiety. The proposed change [in HB 203] does not assure this constituency that this is the final change, and the bill demonstrates that the state needs money and that AIDEA can't pay

the dividend. Thus this changes the rules so the state can get the money.

MR. BARRY agreed with Representative Hawker that HB 203 does not damage AIDEA's health as a financial entity today. What it does, he said, is raise the uncertainty that no one can answer because the legislature always has the right and the authority to appropriate funds from AIDEA. He implored the committee to not [raise that uncertainty] for a \$9 to \$18 million dollar dividend, when it could seriously damage the long-term program of AIDEA.

Number 2218

REPRESENTATIVE ROKEBERG asked whether Mr. Barry agreed that HB 203 doesn't jeopardize financial ability to conduct financial operation, but might raise the level of uncertainty in the bond market.

MR. BARRY said yes.

REPRESENTATIVE ROKEBERG asked what AIDEA's current bond rating is.

Number 2250

SARA FISHER-GOAD, Alaska Industrial Development and Export Authority, Department of Community & Economic Development, said she would provide the rating information in writing. It is an "A" rating, with some differences between the rating agencies.

CHAIR ANDERSON suggested that since the AIDEA argument focused on the long-term effects of this change in the bond market, it would have been useful for AIDEA to come prepared with information on AIDEA's current bond rating.

REPRESENTATIVE ROKEBERG asked Mr. Barry to provide an analysis of what the net income figures would be under old the GASB [Government Accounting Standards Board] rules.

Number 2295

MR. BARRY replied that the impairment charges would be the same under either set of rules.

REPRESENTATIVE ROKEBERG asked if the net income available for a dividend would be similarly impaired.

MR. BARRY agreed that there would be no change to the impairment [of assets] by adopting the GASB changes.

REPRESENTATIVE ROKEBERG clarified that [HB 203] allows an AIDEA dividend payment to be made by changing the definitions of net income and restricted net income.

Number 2316

MR. BARRY agreed. He clarified that it is not the board's contention that the payment of the dividend of \$9 million to \$18 million would in any way impair AIDEA's bond rating. But he said it will raise uncertainty as to future bond sales that AIDEA may want to undertake. Because AIDEA officials are not contemplating a bond sale tomorrow or next week, he said he didn't think there would be any impact in the very near future.

MR. BARRY confirmed Representative Rokeberg's statement that AIDEA has no plans to sell new bonds in the next six to nine months. He said AIDEA was able to take advantage of the low interest rate last year.

TAPE 03-27, SIDE B

Number 2381

REPRESENTATIVE ROKEBERG asked about the two impairment losses.

MR. BARRY said the Healy Clean Coal Project has a [fair value] of \$56 million. As of June 30, 2002, Alaska Seafood International has a [residual value] of \$22,400,000, which consists of the land and one of two buildings.

REPRESENTATIVE ROKEBERG asked about the \$85-million bond issue on the Healy Clean Coal Project.

Number 2336

MR. BARRY clarified that the Healy Clean Coal Project has been shut down since 1999. The write-down occurred because the original investment of \$120 million in state funds and almost \$180 in federal funds was not producing any income and had no prospect of doing so in the near future. He acknowledged that the recognition of that loss did not affect the cash earnings of the rest of AIDEA's assets. In AIDEA's case, between the state and the federal government, nearly \$300 million in cash was invested, and it is gone.

REPRESENTATIVE ROKEBERG asked if there are any other assets on the books that AIDEA may be writing down in the near term.

MR. BARRY replied that AIDEA is currently demolishing an ore concentrate building in Skagway. He said it's not a major asset; it's valued on the books at \$2 million. The building has become a life-safety factor to the local community. AIDEA will take a write-down on some aspect of it; some assets will remain. He said the answer is yes, but he is not aware of anything significant at this time.

Number 2243

REPRESENTATIVE HAWKER said he believes AIDEA's testimony lends credibility to the House Finance Committee's interest in establishing a comprehensive dividend formula for AIDEA. He urged the committee to pass HB 203 on to that committee.

Number 2191

CHAIR ANDERSON, noting that no other people wished to testify, closed public testimony.

Number 2189

REPRESENTATIVE GATTO moved to report HB 203 out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HB 203 was reported from the House Labor and Commerce Standing Committee.

HB 13-SUCCESSOR LIABILITY FOR PRODUCT LIABILITY

Number 2175

CHAIR ANDERSON announced that the next order of business would be HOUSE BILL NO. 13, "An Act declaring legislative intent to reject the continuity of enterprise exception to the doctrine of successor liability adopted in *Savage Arms, Inc. v. Western Auto Supply*, 18 P.3d 49 (Alaska 2001), as it relates to products liability; providing that a successor corporation or other business entity that acquires assets of a predecessor corporation or other business entity is subject to liability for harm to persons or property caused by a defective product sold or otherwise distributed commercially by the predecessor only if the acquisition is accompanied by an agreement for the successor to assume the liability, results from a fraudulent conveyance to

escape liability for the debts or liabilities of the predecessor, constitutes a consolidation or merger with the predecessor, or results in the successor's becoming a continuation of the predecessor; defining 'business entity' that acquires assets to include a sole proprietorship; and applying this Act to the sale, lease, exchange, or other disposition of assets by a corporation, a limited liability company, a partnership, a limited liability partnership, a limited partnership, a sole proprietorship, or other business entity that occurs on or after the effective date of this Act."

Number 2164

REPRESENTATIVE ROKEBERG, sponsor of HB 13, explained that legislation similar to this bill passed the legislature last year but was vetoed by the governor; the only controversial part of that bill was the retroactive application of legal language, but HB 13 does not contain that language. The bill sets forth the standard business succession liability for the purchase of a business and clarifies under what circumstances the new entity remains responsible for the liabilities of the former owner. He explained that the bill was referred to the committee because of its economic impact on commerce. It overturns an Alaska Supreme Court case that was inconsistent with [laws in] 48 other states. He said making Alaska's business laws consistent with other states' laws helps build a stable business environment.

Number 2083

HEATHER NOBREGA, Staff to Representative Norman Rokeberg, Alaska State Legislature, explained that under HB 13, when a person purchases a company, the person is not liable for the company's previous mistakes and harm unless the person assumes those liabilities. The new owner can be held liable for the previous company's liabilities under four exceptions: (1) if the new owner assumes the liabilities; (2) if [the purchase] was a fraudulent attempt to avoid the liabilities; (3) if the purchase was a consolidation or merger and the new company wouldn't be harmed by assuming those liabilities; or (4) the new company is in fact a continuation of the same company.

MS. NOBREGA noted that HB 13 relates to product liability, which hadn't been [litigated] in Alaska before 2001, when the Alaska Supreme Court made a decision on the law. She explained that the supreme court recognized two exceptions: the "mere continuation" of the business and the "continuity of enterprise," a newer doctrine that has been rejected by most of

the jurisdictions that have looked at the issue. This bill rejects that doctrine ["continuity of enterprise"] and adopts the four general standards that are recognized by most courts in the nation.

Number 2007

REPRESENTATIVE ROKEBERG mentioned that the "continuity of enterprise" theory has been rejected in the Restatement (Third) of Torts. He said HB 13 adopts the [more] widely accepted rule. He noted that the Alaska Supreme Court adopted this "continuity of enterprise" provision that has been specifically rejected by most other states. Representative Rokeberg reported that this court case, [Savage Arms, Inc. v. Western Auto Supply Co.] has been settled, and said retroactivity [is no longer an issue]. This bill is [prospective] so that Alaska's law is clear on the subject of product liability when a company is purchased. He explained that sometimes people who wish to file lawsuits against corporations over product liability go "shopping" [for a jurisdiction that has unusual] law. If Alaska had an unique [interpretation of this provision], people might use Alaskan courts to file these kinds of suits. He opined that businesses laws should be uniformly applied throughout the United States.

CHAIR ANDERSON reminded the committee that the next referral is the House Judiciary Standing Committee, where detailed legal questions can be examined.

Number 1900

REPRESENTATIVE DAHLSTROM moved to report HB 13 out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HB 13 was reported from the House Labor and Commerce Standing Committee.

HB 184-INDIVIDUAL DEFERRED ANNUITIES

CHAIR ANDERSON announced that the final order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 184, "An Act relating to individual deferred annuities; and providing for an effective date."

Number 1860

REPRESENTATIVE JOHN COGHILL, Alaska State Legislature, explained that he sponsored HB 184 by request. His original bill simply decreased the guaranteed interest rates on deferred annuities

from 3 percent to 1.5 percent. While he was drafting this bill, however, the National Association of Insurance Commissioners (NAIC) drafted model language to solve the problem with an indexing tool. He said interest rates are so low that [companies selling] annuities are [having trouble] with solvency. This NAIC model language contains an index that allows the companies to be solvent in times of low interest rates, but it also guarantees the consumer a minimum rate of interest.

REPRESENTATIVE COGHILL described two proposed amendments [suggested by the Division of Insurance] to SSHB 184. He noted that Amendment H.1 [labeled 23-LS0753\H.1, Ford, 4/1/03] is consistent with the new model language. Amendment H.1 read:

Page 2, line 13:

Delete "an additional period"
Insert "additional periods"

REPRESENTATIVE COGHILL noted that Amendment H.2 [labeled 23-LS0753\H.2, Ford, 4/1/03] is a new section that changes the effective date and actually gives time for an implementation period. Amendment H.2 read:

Page 2, following line 29:

Insert a new bill section to read:

"* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION PERIOD FOR ANNUITY CONTRACTS;
APPLICABILITY OF ACT. During the period that begins on the effective date of this Act and ends on the day before the date that is two years after the effective date of this Act, this Act applies to an annuity contract when the contract form for that annuity is approved by the director of the division of insurance. For an annuity contract not otherwise affected by this section, this Act applies to annuity contracts beginning on the date that is two years after the effective date of this Act."

Renumber the following bill section accordingly.

REPRESENTATIVE COGHILL noted that he is bringing SSHB 184 to the committee today for information, not necessarily for movement. He said he is still digesting the changes in the bill. He pointed out that Amendment H.2 has an implementation period. Companies will have two years to rewrite their contracts, and

the Division of Insurance [Department of Community and Economic Development] won't receive [a large volume of] newly revised contracts all at once.

Number 1686

REPRESENTATIVE DAHLSTROM moved to adopt SSHB 184 as a work draft. There being no objection, it was so ordered.

REPRESENTATIVE COGHILL noted that these amendments were brought to his attention yesterday. He brought attention to NAIC correspondence from NAIC in the information packet and said staff from the Division of Insurance were present to answer questions about the NAIC model.

Number 1596

JOHN GEORGE, Lobbyist for the American Council of Life Insurers (ACLI), explained that ACLI is an insurance trade association that writes life insurance and annuity products. In response to a question by Representative Rokeberg, he said his clients who sell annuities have a real problem. If a client decides to terminate the agreement and get the money back, the law requires a minimum 3 percent return on the money. That was set years ago when interest rates were 14 and 20 percent, and no one foresaw an interest rate as low as 3 percent; that figure was considered rock bottom for consumer protection. However, times have changed: interest rates have dropped substantially, and insurance companies are not getting a 3 percent return on the money. He likened it to asking a bank to guarantee 5 percent on a savings account. Banks can't do that and stay in business, he told members; banks would have to terminate savings accounts.

Number 1552

MR. GEORGE said the life insurance industry is deciding whether to continue offering these products. Companies aren't on the verge of insolvency, but this bill recognizes that for these companies to survive over the long term, the [interest rate] needs to be adjusted. The "simple fix" [in original HB 184, before NAIC completed its work] was to lower the interest rate [to 1.5 percent]. He said NAIC had been working for several years to come up with this model. Therefore, he encouraged the committee to use the national standard. He explained that a number of other states adopted the 1.5 percent interest rate with a sunset clause of one or two years, anticipating that the matter would have to be revisited when NAIC produced its model.

He predicted that Alaska will be on the cutting edge because of the timing of this legislation and the completion of the NAIC model.

Number 1430

KATIE CAMPBELL, Life and Health Actuary, Division of Insurance, Department of Community & Economic Development, responded to questions from Representative Rokeberg. She said the goal of Amendment H.2 is to allow a two-year transition; she could not clarify whether the amendment accomplished that. She also said that as she reads it, the amended language would be inserted following line 29; then Section 2, with an effective date of July 1, 2003, would be renumbered as Section 3.

REPRESENTATIVE ROKEBERG asked about the interest rate set on page 2, line 8, "(A) the five-year constant maturity treasury rate reported by the federal reserve".

MS. CAMPBELL replied that this index is a good choice because the federal government will be issuing treasury [bonds] and the index is representative of the current market.

REPRESENTATIVE ROKEBERG described [the index] as a "market basket" of different maturities.

Number 1180

MR. GEORGE added that the index is similar to the investments that insurance companies actually make.

REPRESENTATIVE ROKEBERG asked Ms. Campbell if she understood the language in the NAIC-inspired amendment.

CHAIR ANDERSON noted that Ms. Campbell had nodded in agreement.

Number 1122

REPRESENTATIVE ROKEBERG moved to adopt Amendment H.1 [text provided previously]. There being no objection, it was so ordered.

Number 1091

REPRESENTATIVE ROKEBERG moved to adopt Amendment H.2 [text provided previously]. There being no objection, it was so ordered.

REPRESENTATIVE ROKEBERG reported a possible conflict of interest: his stepson is the national sales manager for Liberty Financial Corporation, which sells annuities.

CHAIR ANDERSON indicated he'd still like Representative Rokeberg to vote.

Number 1050

REPRESENTATIVE ROKEBERG moved to report SSHB 184, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSSSHB 184(L&C) was reported from the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:37 p.m.